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THE CONSTITUTION THE TRUE REMEDY.

SPEECH

OF

HON. EDGAR COWAN,
OF PENNSYLVANIA,

ON THE

CONCURRENT RESOLUTION OF THE COMMITTEE OF FIFTEEN.

DELIVERED IN THE SENATE OF THE UNITED STATES, MARCH 2, 1866.

The Senate resumed the consideration of the following resolution of the House of Representatives:

Resolved by the House of Representatives, (the Senate concurring,) That in order to close agitation upon a question which seems likely to disturb the action of the Government, as well as to quiet the uncertainty which is agitating the minds of the people of the eleven States which have been declared to be in insurrection, no Senator or Representative shall be admitted into either branch of Congress from any of said States until Congress shall have declared such State entitled to such representation.

The pending question being on the amendment of Mr. HENDRICKS to insert the words "the inhabitants of" after "eleven States."

Mr. COWAN. Mr. President, in any remarks I may make to-day, I shall not attempt to suggest any new remedies for the evils which now afflict the country. I shall only try to show that the old are amply sufficient, and that there is not the least necessity for going outside the Constitution and laws in order to vindicate the Government. We do not need to amend the one or to remodel the other—and especially we ought not to violate the one and disregard the other in order to attain our ends.

I am glad to say to the country that I only state in this the views of the President. He has sworn to support and maintain the Constitution and see that the laws are fully executed, and he will stand there, no matter what comes.

My object now, then, is simply to induce a return to the great principles of the Government which for a period of three quarters of a century were undisputed, and which gave to us a progress and prosperity heretofore unparalleled in the world.

Mr. President, the United States are in themselves a body-politic or corporation, created originally by thirteen States, with certain powers conferred upon it by a great charter called "The Constitution of the United States," which from the year 1787 till the present, with a few amendments not material here, has continued to be the law of its existence and the measure of its powers and authority. In and by the terms of the Constitution it was provided that new States might be admitted by the Congress into the Union, and under this authority, from time to time, States have been admitted till the number amounts to thirty-six.

The States that originally joined in creating the Union were themselves bodies-politic or corporations, with governing powers granted to them by their people supreme, except so far as limited in their constitutions and the Constitution of the United States. The new States have also their charters or constitutions, made by their people, and, when once admitted, stand upon the same footing in all respects as the original States.

The Constitution further provides that the Senate of the United States shall be composed of two Senators from each State, and that each House shall be the judge of the elections, returns, and qualifications of its own members.

Five years ago, upon the election of Mr. Lincoln to the Presidency, the secession party of the cotton States, deeming it a fitting occasion to commence the carrying out of their schemes, and being in possession of most of the places of power in those

States, they undertook to repeal the ordinances by which they had bound themselves in the Union by enacting ordinances of secession. They then expelled the United States authorities from the possession of their territories in all of their parts, except two small forts, Pickens and Sumter. In the mean time the Congress was in session and the President was in the Executive Mansion. They had full power to raise and support armies, to provide and maintain a navy, and they had full power to call forth the militia to execute the laws of the Union and suppress the insurrection. They did nothing, and for four months the people of the cotton States were left at the mercy of the conspirators, with no protection and no assistance. The Government was paralyzed, and the rebels, without let or hindrance, established a confederate government in fact and in full possession, which had the power to compel the obedience of the people to all its decrees and laws; and this was done with an iron hand. The people on their part, without organization, without means, looked in vain to the United States for aid and deliverance, but none came. They voted, when they had a chance, in opposition to the scheme of secession, but their votes were disregarded and the usurpation went on to its completion.

The 4th day of March, 1861, came, and Mr. Lincoln was inaugurated. There was no Congress. The Army was demoralized, the Navy was distrusted, and the Treasury was empty. No one knew what to do; wise men hesitated; timid men quailed; and it was doubtful whether we would attempt to rescue the people, suppress the insurrection, and put the Union again in possession. This suspense lasted till the 12th of April, 1861, when the rebels, emboldened by the apparent weakness of the Government, opened fire upon Fort Sumter to drive the United States from the possession of their last foothold in South Carolina. The first shot settled the question forever; almost every man in the North started as if struck by it, and rushed to offer his service to the President. War was imminent, and sides must be taken.

Mr. Greeley, in his *American Conflict*, volume one, page 450, says:

"Secession, as we have seen, had been initiated by the aid of the most positive assurances that, once fairly in progress, every slave State would speedily and surely unite in it; yet, up to this time but seven of the fifteen slave States, having a decided minority of the population, and a still more decided minority of the white inhabitants, of that 'section,' had justified the sanguine promise. On the contrary the so-called 'border States,' with Tennessee and Arkansas, had voted not to secede, and most of them by overwhelming majorities; save that Kentucky, Maryland, and Delaware had scarcely deigned to take the matter into consideration. And, despite vice president Stephen's glowing rhetoric, it was plain that the seceded States did not and could not suffice to form a nation.' Already the talk in their aristocratic circles of protectorates and imported princes betrayed their own consciousness of this. Either to attack the Union, and thus provoke a war, or to sink gradually but surely out of existence beneath a general appreciation of weakness, insecurity, and intolerable burdens, was the only choice left to the plotters and upholders of secession."

"And, though signally beaten in the recent elections of the non-seceded slave States, they had yet a very strong party in most of those States; stronger in wealth, in social standing, and in political activity and influence than in numbers. A majority of these had been able to bring the conventions or Legislatures of their respective States to say, with tolerable unanimity, 'If the Black Republicans attempt to coerce the seceded States we will join them in armed resistance.' It was indispensable, therefore, to their mutual purposes that there should be 'coercion.'"

"So late as the 4th—a month after the return of their 'commissioners' from the abortive peace conference—Virginia, through her convention, by the decisive vote of 89 to 45, refused to pass an ordinance of secession."

In March, Tennessee voted 91,803 Union and 24,749 for convention, (*Ibid*, page 481,) but afterward the Legislature entered into articles with the confederacy giving it control of the military force and public property—Senate, yeas 14, nays 6, absent or not voting 5; House, yeas 43, nays 15, absent or not voting 18. This was the 7th of May, 1861, and an ordinance of secession was ratified by the people on the 8th of June following, under the following circumstances, says Mr. Greeley, page 483—and I read with great pleasure from Mr. Greeley, because if there is any man in the country who ought to be authority with the dominant party in the Senate, I think it is Mr. Greeley:

"The network of railroads checkering the State, and especially the great line connecting Virginia, through Knoxville and Chattanooga, with the cotton States, was instantly covered with rebel soldiers, and all freedom of opinion and expression on the side of the Union completely crushed out. Governor Harris, on the 24th of June, issued his proclamation declaring that the vote of the 8th had resulted as follows:

	<i>Separation.</i>	<i>No Separation.</i>
East Tennessee.....	14,780	32,923
Middle Tennessee.....	58,265	8,198
West Tennessee.....	29,127	6,117
Military Camps.....	2,741	—
Total.....	104,913	47,238

"But a convention of the people of East Tennessee—a region wherein the immense preponderance of Union sentiments still commanded some degree of freedom for Unionists—held at Greenville on the 17th, and wherein thirty-one counties were represented by delegates, adopted a declaration of grievances wherein they say:

"We, the people of East Tennessee, again assembled in a convention of our delegates, make the

following declaration in addition to that heretofore promulgated by us at Knoxville on the 30th and 31st days of May last.

"So far as we can learn, the election held in this State on the 8th-day of the present month was free, with but few exceptions, in no part of the State other than East Tennessee. In the larger portion of Middle and West Tennessee no speeches or discussions in favor of the Union were permitted. Union papers were not allowed to circulate. Measures were taken in some parts of Tennessee in defiance of the constitution and laws, which allow folded tickets, to have the ballots numbered in such manner as to mark and expose the Union voters."

From the same volume, page 455, we may learn how North Carolina was carried into the whirlpool of rebellion. Here it is:

"The State of North Carolina, though never deliberately and intelligently hostile to the Union, became a much easier prey to the conspirators. Her Democratic Legislature—reconvened at Raleigh, November 19, 1860—had refused, a month later, to pass a bill to arm the State, though visited and entreated to that end by Hon. Jacob Thompson, then a member of Mr. Buchanan's Cabinet; and had adjourned without even calling a convention. This, as we have seen, did not prevent Governor Ellis taking military possession of the Federal forts near Beaufort and Wilmington (January 2) on the pretext that, if he did not do it, a mob would! He proceeded to convene the Legislature in extra session, and to worry it into calling a convention for which an election was duly held. But the act making this call provided that the people, when electing delegates, might vote that the convention should or should not meet. They profited by the gracious permission, and while electing a Union convention by an immense majority; voted—to guard against accidents—that the convention should not meet; their vote—quite a heavy one—standing, for holding, 46,672; against holding, 47,823; majority for no convention, 651. This vote temporarily checked all open, aggressive movements in the interest of disunion, but did arrest nor diminish the efforts of its champions. On the contrary, a great State rights convention was assembled at Raleigh on the 22d of March, and largely attended by disunionists from South Carolina, Virginia, and other States. Its spirit and its demonstrations left no doubt of the fixed resolve of the master-spirits to take their State out of the Union, even in defiance of a majority of her voters. But they concluded to await the opportunity which South Carolina was preparing. This opportunity was the taking of Fort Sumter; when Governor Ellis proceeded to seize the United States branch mint at Charlotte and the Federal arsenal at Fayetteville; and thereupon to call an extra session of the Legislature. This session commenced May 1, and in a few days thereafter resulted in the passage of the following:

"Whereas by an unwarranted and unprecedented usurpation of power by the Administration at Washington city, the Government of the United States of America has been subverted; and whereas the honor, dignity, and welfare of the people of North Carolina imperatively demand that they should resist, at all hazards, such usurpation; and whereas there is an actual state of revolution existing in North Carolina, and our sister state of Virginia, making common cause with us, is threatened with invasion by the said Administration: Now, therefore,

"Resolved, That his Excellency the Governor be authorized to tender to Virginia, or to the government of the confederate States, such portions of our volunteer forces now, or that may be hereafter, under his command as may not be necessary for the immediate defense of North Carolina.

Here is his version of the way Arkansas ordinance was procured, to be found on page 486:

"The Arkansas convention assembled about the 1st of March, and on the 16th was waited on by William S. Oldham, a member of the confederate Congress and a commissioner from Jefferson Davis, bearing a message from that potentate dated March 9, four days after the adjournment of Congress, and when the contents of Mr. Lincoln's inaugural were familiar to the entire South. The convention listened to Mr. Davis's letter wherein he dilated on the identity of institutions and of interests between his confederacy and the State of Arkansas, urging the adhesion of the latter to the former; and after taking two days to deliberate, a majority—39 to 35—voted not to secede from the Union. The convention proceeded, however, to resolve that a vote of the people of their State should be taken on the 1st of August ensuing—the ballots reading 'secession' or 'co-operation'—the convention to stand adjourned to August 17, when if it should appear that secession had received a majority this should be regarded as an instruction from their constituents to pass the ordinance which they had now rejected; and so having elected five delegates to a proposed conference of the border States at Frankfort, Kentucky, May 27, the convention stood adjourned. Yet this identical convention was reconvened upon the reception of the news from Fort Sumter, and proceeded with little hesitation to pass an ordinance of secession by a vote of 69 to 1. That ordinance asserts that this convention, by resolves adopted March 11, had pledged 'the State of Arkansas to resist to the last extremity any attempt on the part of such power to coerce any State that seceded from the old Union.' The ordinance proceeds to set forth that the Legislature of Arkansas had, on the 18th October, 1836, by virtue of authority vested therein by the convention which framed the State Constitution, adopted certain propositions made to that State by Congress, which propositions were freely accepted, ratified, and irrevocably confirmed as articles of compact and Union between the State of Arkansas and the United States, which irrevocable compact this convention proceeded formally to revoke and annul, and to declare 'repealed, abrogated, and fully set aside,' by the identical act which withdraws Arkansas from the Union and absolves its citizens from all allegiance to its Government."

On summing up the results of all the indications of public opinion, it is impossible to dissent from the conclusion of Mr. Greeley's twenty-second chapter, page 351:

"The slave States and District which had not united in the movement were as follows:

States.	Free population in 1860.	Slaves.	Total.
Arkansas.....	324,323	111,194	435,427
Delaware.....	110,420	1,798	112,218
Kentucky.....	930,283	225,490	1,155,713
Maryland.....	599,846	87,188	687,034
Missouri.....	1,067,352	114,965	1,182,317
North Carolina.....	661,586	331,081	992,667
Tennessee.....	834,063	275,754	1,109,847
Virginia.....	1,105,192	490,887	1,596,079
District of Columbia.....	71,895	3,131	75,076
Total.....	5,704,900	1,641,478	7,346,378

"So that, after the conspiracy had had complete possession of the southern mind for three months, with the southern members of the Cabinet, nearly all the Federal officers, most of Governors and other State functionaries, and seven eighths of the prominent and active politicians, pressing it on, and no force exerted against nor in any manner threatening to resist it, a majority of the slave States, with two thirds of the free population of the entire slaveholding region, were openly and positively adverse to it; either because they regarded the alleged grievances of the South as exaggerated if not unreal, or because they believed that those wrongs would rather be aggravated than cured by disunion."

Now, to sum up, here is a free population of over five and a half millions in the insurrectionary States, of which, Mr. Greeley asserts two thirds to have been loyal and true to the Union in spite of the extraordinary influences brought to bear upon them, leaving not quite two millions represented by secession. But to understand this in a still clear light, it is necessary to analyze this two millions and take a look at its elements before we undertake to decide upon its loyalty.

Arkansas had a white population of 324,323 in 1860, and she cast a vote of 54,050, showing that the adult males over twenty-one years of age were almost exactly one sixth of the whole. Who were the other five sixths? Women and children. Yes, sir, 270,000 people in Arkansas, whom nobody would dream of charging with treason, who could not well commit it under any circumstances, much less in those which surrounded them.

Again, 25,321 adult men voted against Mr. Breckinridge, against 28,732 for him, and I suppose nobody pretends but that those who voted for Douglas and Bell were Union men, whatever the others might be. But who were the others? They were 28,000 of the rank and file of American voters, and I will consider for the argument's sake that they were as intelligent as any equal number taken from any other part of the country. How many of them voted for Breckinridge with intent to destroy the Union? No man can say that if that had been the issue distinctly pronounced, that 14,000 would have so voted, nor that 7,000 would have done so, nor indeed that any number would have done so, except the actual leaders of the movement.

So much for Arkansas. Let us look at Tennessee next. Her white population was 834,000, and her votes in 1860, were, Bell 69,274, Douglas 11,350, and Breckinridge 64,209, or a few more than one sixth of the whole, and showing a majority of more than 16,000 votes for the Union candidates, Bell and Douglas. She had 700,000 or nearly, of innocent women and children, and 80,000 loyal voters at least, and if we add to these the thousands and tens of thousands who voted for Breckinridge without for one moment thinking of treason, among them the present President of the United States, whose loyalty has been tried in the fire, how many actually guilty conspirators can you point out in Tennessee? Will any one hazard the assertion that 10,000 or even 5,000 original conspirators could be found there? Let him hesitate.

Next North Carolina. Her white population was 661,586, and her votes in 1860 were, for Douglas 2,701, Bell 44,990, Breckinridge 48,538, or nearly one for every seven and a half of her people, and all I have said of Tennessee may well apply to her. Virginia presents herself in the same category with a vote somewhat larger for her population, and a majority of more than 18,000 for the Union candidates. And so I might go on, with every State, county, and neighborhood throughout the South, and after sifting the matter to the very bottom, it would be found that the number of the guilty contrivers of secession is so small when compared with the masses of the people, or even the masses of the voters, that it sinks into insignificance. Nor is this strange. It is only what the world has always known, and the postulate upon which it has always acted. There never can be in any community as highly civilized as ours any very great number of men capable of the crime of treason, and it is well it is so, otherwise society would enjoy few intervals of peaceful repose. War would be the rule and not the exception. The people in all ages have been disposed to yield themselves to leaders, and to follow them, not always with a blind obedience, but with confidence that their trust would not be abused.

How many responsible leaders were there in the seceding States when the United States authorities were ousted from the possession of their territories? How many guilty men controlled the movement up till the time they had the people wholly in their power? Because from that time forward you will remember that no man who had not taken part before, can be or ought to be responsible except in so far as he suffers in the war which follows. Were there ten thousand, or were there but five thousand? In answering this question let every man look to his own county or district, and let him fix the number of men in it who ought to be held for the disorders sure to result for an attempt of this kind. I think he will find the number he would ever think of arraigning to be very few.

Where, too, are most of those guilty men of the South to-day? Is not much the larger number of them gone; some dead in the course of nature, Floyd, Yancey, and others; some dead on the battle-fields, as Jackson, Barksdale, and others; some

are in exile in foreign lands as Mason, Slidell, Price, Wigfall, and others; so that those who remain are incapable of great mischief, or only of such mischief as we have ample means of preventing by recourse to the common and obvious legal remedies.

If any man asks how it came that the people, being in favor of the Union, could be overcome and led away into such a terrible rebellion as we have just put down without being themselves guilty, I will answer him that in this case their confidence was abused by their leaders; they were for a long time induced to believe that these were their friends, with no motive in view but the good of the whole country; that their zeal in their behalf was the result of excessive patriotism and not heated by an unseen fire; that they were their safest defenders against the greater strength of the North because they were loudest in their warnings of danger from that quarter, and therefore they bestowed upon them all the offices and places in the gift of the strongest and most popular party in their midst. All usurpers achieve places of power by great apparent devotion to the interests of the people, and I suppose the cruelty of the tyrant has always been pitiless in the same ratio as his former patriotism was ardent. His shortest route to the throne is when he marches through the most crowded thoroughfares bearing aloft the flag of liberty; and the devil is never half so successful and bloody in his crusades as when he puts on the armor of superior sanctity and walks humbly under the banner of the cross.

Again, the people are easily misled by terror or overcome by fear. The wicked and designing combine, contrive, and organize; the virtuous and unambitious pursue their avocations; the first multiply their power indefinitely by acting in concert according to a preconceived plan; the latter, however numerous, are as an army without leaders and without discipline, an easy prey to their captors. Here, too, perhaps, lies the true secret of the necessity for government, inasmuch as it is the organized force of the people kept constantly on foot for the purpose of furnishing for them a rallying point from which to resist and crush other and inimical combinations against the peace of society. Hence nothing so much aids in a revolutionary movement in a confederacy as that the insurgents should get hold of the governments of the States composing it, or some of them, because the treason is easy in proportion to the control the traitor can exercise over the insignia of power among the people. Let him carry the loyal flag, and thousands will follow it as though in loyal hands. Let him sign with the national seal, and thousands will respond as though the impress was made by a loyal officer. The Government of England halted at one time because James II had thrown the great seal into the Thames! How to get along without that piece of iron was a puzzle, but it shows the reverence men everywhere entertain for the insignia, the emblems, of power.

Thus in our case, when the secessionists procured themselves to be made Governors, judges, and legislators all over the southern States, according to their several constitutions and laws, they were in a position to command the obedience of the southern people wherever they were not protected by superior force. Nor will it be found so easy for the common people to decide between the State and the United States when they are in conflict as most persons thoughtlessly suppose. Lawyers may be very clear; but the people are not all lawyers, and are not expected to judge correctly of either titles or jurisdiction; they usually follow those who are in possession of the tribunals to which they are accustomed. Hear Mr. Greeley on some of the machinery which may be brought to bear upon them by means of secret societies, organized with the sole view of overawing them, and compelling their co-operation in deeds of violence, and then let Senators say what they would have done themselves in such a reign of terror. I read from page 350, *et seq*:

"Before the opening of 1861, a perfect reign of terror had been established throughout the Gulf States. A secret order, known as 'Knights of the Golden Circle,' or as 'Knights of the Columbian Star,' succeeding that known, six or seven years earlier, as the 'Order of the Lone Star,' having for its ostensible object the acquisition of Cuba, Mexico, and Central America, and the establishment of slavery in the two latter, but really operating in the interest of disunion, had spread its network of lodges, grips, passwords, and alluring mystery all over the South, and had ramifications even in some of the cities of the adjoining free States. Other clubs, more or less secret, were known as 'the Precipitators,' 'Vigilance Committee,' 'Minute Men,' and by kindred designations; but all of them were sworn to fidelity to 'southern rights,' while their members were gradually prepared and ripened, wherever any ripening was needed, for the task of treason. Whoever ventured to condemn and repudiate secession as the true and sovereign remedy for southern wrongs, in any neighborhood where slavery was dominant, was thenceforth a marked man, to be stigmatized and hunted down as a 'Lincolnite,' 'submissionist,' or 'abolitionist.' One refugee planter from southern Alabama, himself a slaveholder, but of northern birth, who barely escaped a violent death because of an intercepted letter from a relative in Connecticut, urging him to free his slaves and return to the North, as he had promised, stated that he had himself been obliged to join the 'Minute Men' of his neighborhood for safety, and had thus been compelled to assist in hanging six men of northern birth because of their Union sentiments, and he personally knew that not less than one hundred men had been hung in his section of Georgia, during the six weeks which preceded his escape in December, 1860."

And at this point I wish Senators to pause before determining upon the guilt of the people of any State in circumstances like these. Let us see if the fault was on their side.

Where were they to look for protection against all this terrible machinery of parties, secret societies, precipitators, vigilance committees, and minute-men, backed as they were by the State officers everywhere? What power had they established to stand watch and ward over them at such a time? It was the Federal Government of the United States, having authority over the armies, the militia, and the navies of the United States. It was, too, the very object of all these threats, and was openly notified and cognizant of all these preparations against it. It was bound by the very law of its own existence to defend itself, and it was further bound, nay, it was of the very essence of its Constitution, to protect the freedom and liberties of the people. It was created for that purpose, and was entitled to the allegiance of the people only when it performed its trust.

What then, I ask, did it do?

Mr. President, I tremble when I answer, nothing, nothing; but, on the other hand, allowed itself to be ignominiously stripped of its arsenals, forts, and public property of every kind all over the disaffected region. Not a gun was fired, not a sword drawn, to sustain its authority or vindicate its honor. Congress accuses the President, and the President accuses Congress, for these shameful derelictions of duty. I leave it to the future to decide between them; it is enough that we do now know that there never was such a great breach of public trust before. Never before had men entrusted with the government of a great empire counting millions upon millions of people loyal and true to it abdicated their high prerogatives so basely; never before were a people so shamefully deprived of that protection which was due to them as the consideration for their allegiance.

And yet it is this people, thus betrayed by their leaders, by their State governments, by the Federal Government, thus defenseless in the very face of civil war, who voted every time they were free to do so for the old Union and the old flag with a pertinacity and a resolution of which every lover of his country and its people ought to be proud. And it is this same people who, after being rescued from the grasp of the conspiracy, are constantly held up to the country as though they had been all traitors. And while the Federal Government is now in undisputed possession of all the national domain, from the Potomac to the Rio Grande, with ample means and opportunity to seize upon and arrest all original conspirators and leaders in secession, all Knights of the Lone Star or Golden Circle, all vigilance committees, all precipitators and minute-men, with courts, judges, juries, marshals, &c., and all the machinery proper for their trial and conviction, yet no one has been punished, nor have I seen or heard of a single one of all the furious patriots with which this Congress teems, and who never speak of the South without telling you it is swarming with traitors, who has made the slightest effort to enforce the law against any one of these really guilty persons. Not one of them has sued out a warrant, not one has made an arrest, not one of them has even asked that the law and the law alone shall decide; not one. And yet these same persons spend week after week and month after month in devising unlawful measures and schemes for the punishment of the people, not as individuals in courts, where they may be heard in their own defense, but as States and communities, in a Congress where they are not represented, and where all are confounded together, loyal and disloyal, true men and traitors, innocent and guilty, tender women and blood-stained minute-men, little children and grim demagogues, in one great mass, condemned as guilty, and punished as such with a rigor that Austria has repented of and Russia abandoned, it is hoped, forever.

Mr. President, I am unable to express in terms sufficiently strong my condemnation of our cruelty to this rescued people. When I think of the way we abandoned them in the outset, how we allowed them to get into the toils of the conspirators, of the terrible war in which they were involved, of their desolate homes and devastated fields, I cannot think there is a human being who would say that they ought to suffer further. Whatever guilt may have been on their souls surely has been atoned for by what they have suffered in the war, and as the people they are purged, and ought to stand purged in the forum of the nation.

I say the people are purged; war always purges the people; but I want it distinctly understood, that while I myself utter no cry for more blood, I will do all that lies in my way to punish any I think really guilty of treason in this rebellion. If I find one of this sort undertaking to thrust himself into the councils of the country or to take the lead in public affairs, I will not appeal to the House of Representatives nor to the Senate, nor to the President to prevent him; I will appeal to that which is higher still—the law, the expressed will of the American people. I will have him arrested by the law, arraigned by the law; I will offer evidence of his guilt to a jury of his peers, and I will not assail his State or its people. I will

not involve the women and children of his neighborhood in his guilt; nay, in my eyes his own wife and children shall be presumed innocent. He shall be heard in his defense fully, and confronted with the witnesses against him. He may show everything which goes to show his innocence; he may show that the Federal Government either did not or could not protect him; that another government was over him which he durst not disobey. I would have all this done, soberly, solemnly, and patiently, in a court of justice, and according to all the forms which have been adopted by us as befitting the dignity of the American people, so that all men should bow their heads reverently in presence of its majesty. If he was convicted, I would have him punished and made ignominious. Treason is a great, nay, the most heinous of all crimes, and ought to be punished; but it must be punished by the law, and not by Congress nor by the military nor by anybody but the law, administered by the judges and jurors in the courts. It is no answer to say to me that the courts are corrupt and the juries are tainted; the man who makes such an assertion asserts the infamy of his Government, the infamy of his countrymen, and that the great Republic has failed to answer the ends for which it was established. The law is the will of the American people, and whenever the Government cannot or will not try and punish all offenses against that law, then the American people are at the mercy of offenders or tyrants.

It is time we came to this, Mr. President. It will be the solution of all our difficulties, and relieve us from all our troubles; but as long as we endeavor to impress our people with the idea that the populations of the southern States are all rebels and traitors, that they are not to be punished in courts by the law, but in Congress by a deprivation of their rights as free peoples, then the further we go the worse we will fare, for the simple reason that we assume as a fact that which is a falsehood. It is not true that the southern people are now or ever were all traitors; and if the Government had given them the protection to which their allegiance entitled them, they never would have yielded themselves to rebellion.

Let us, then, treat their people according to the great law of the Union, as free States, equal members in the Union, and if we punish at all, let us punish individuals in the courts, where punishment alone can be inflicted.

I now propose to apply the principles I have laid down to a solution of the question which now agitates the country, and I think they will be found effectual. And at the outset, I may ask in all sincerity, what the difference may be, in the eyes of the law, between putting down a great rebellion by armies in war and arresting a single felon who resists by a constable? Is not the difference to be found wholly in the number of persons engaged? Is not the object in both cases the same—to vindicate the laws? Is not the means the same, to use such force as to compel submission to the laws? Surely nobody can doubt this. Let us see, then, what happens during the process. If the felon resists, the constable may kill him; so, if the rebels resist, the soldiers may kill them. When the felon yields, the constable turns him over to the law; and no matter how heinous may have been his crime or how desperate his resistance, he has a right to be tried by the law and punished by the law. The constable being himself the mere creature of the law as such officer, must yield his prisoner to the law; as a man simply, he has no power to touch a hair of his head.

So it is with the rebel or rebels when they surrender to the President or to his generals; these have no power to touch a hair of the head of one of them; the law, which is supreme over Presidents, generals, and Congress, becomes the arbiter of their fate the moment they yield, and this for the most potential of all reasons, namely, that the American people have so willed it. They have adopted it in their Constitution and enacted it in their laws, and no greater indignity could be offered to them than for any one, no matter who, who should dare to substitute his will and his punishment upon any criminal for the law and its punishment; and no matter how atrocious has been the crimes of the prisoner he has a right to appeal to the law against all people; this also is due to the law, because it was against the law he offended, and to the law he ought to make atonement.

And now, Mr. President, this disposes of, or ought to dispose of, all the questions with which the country is so uselessly convulsed. These I propose to examine *seriatim*, and show not only their legal absurdity but also their mischievous effect in preventing the pacification of the country.

The first of these whimsies is that the rebellion destroyed the States whose people were engaged in it by a kind of incorporeal *felo de se*, not very clearly explained even by the authors of the charge. And, indeed, when we consider that the State is an artificial and not a natural person, a body-politic or corporation, existing merely in contemplation of law, not having a soul to be damned nor a body to be kicked, it is difficult to see how it could achieve the extraordinary feat of committing suicide. It is said, however, this is done by forfeiture, as a punishment for crimes committed, not by the State I suppose, for folly has not yet gone that length,

but by its officers and people. Well, I have no objection to the punishment of individuals who commit crimes, but I would ask where it was or is the law that the State should die for the sins of the people. I guess, however, that those who advocate this theory really mean to say to the people of the rebel States, "You have been so wicked recently that as a penalty therefore you shall not have a State at all." But the people, wicked though they may be, still have a right to say, "Will you be good enough to show us where it is written in the Constitution or laws of the United States that we shall not have a State as a punishment for any crime or crimes whatever? If there is any such law we submit of course."

Nobody has shown any such law.

But perhaps the best answer to the *felo de se* hypothesis is in the fact that the States in question give the lie to it by persisting to be alive all the time they are alleged to be dead. And what is still more conclusive, not only alive but vigorous and in very nearly full function, with territories, boundaries, inhabitants, constitutions, laws, Governors, Legislatures, and judiciaries, and more than all that, with the armies of the United States standing by, ready to defend them from all internal and external dangers. This is thought quite ample to repel the imputation of self-murder.

The second sophism is equally fallacious, but far more cowardly, because being afraid to say to a living corporate body "You are dead," it says "You are in fine robust health to be sure, but for fear you might overdo yourself we will take the task of government off your hands and govern your people ourselves as a conquered people." So you see it comes back to the old point precisely, namely, that the people are or ought to be deprived of their States as a penalty for crimes.

Another class of these patriots disavow the dogmas of dead States and conquered peoples, but nevertheless sternly insist that having put down the rebellion at an enormous loss of men and money, we have now a right to impose terms upon the States in question before we restore them again to their old rights. Some of them call this requiring indemnity for the past and security for the future, a phrase that has about as much application to the suppression of an insurrection as it has to the operation of the courts of quarter sessions in dealing with riots. This demand is liable as usual to the same fatal objection which beset the others—it is without the sanction of either Constitution or law, or rather in direct contravention of both. We have seen that when the rebels surrendered they surrendered to the law, and if the law provided no mode by which we can impose conditions or make terms then we are at an end of it.

Again, there is another set still more metaphysical in their notions. They hold that although the rebel States are still States in the Union, yet, because they were for awhile, on account of the rebellion, prevented from enjoying their rights in the Union, they are not now to be restored to those rights till Congress, either by law or concurrent resolution, (I do not know which,) has declared they ought to be so restored. And to fashion this business properly for the action of the two Houses is the work allotted to the somewhat famous committee of fifteen. That body was instructed to inquire into the condition of the States which formed the so-called confederate States, &c., and report whether they or any of them are entitled to be represented in either House of Congress. This is the resolution, but it has been taken to be a little wider than its terms, and the committee has gone on to inquire into the condition of the people as well as into that of the States. So far as it is possible to know, it would seem that this inquiry is not as to the physical condition of the people, their religious or moral condition, nor their intellectual condition, but their loyal condition; and when that word is uttered there is a dead stop; nobody attempts to define it or tell what they mean by it, only it is generally understood to be a clincher and unanswerable.

Suppose we look at this word which serves so many uses to-day. What is a loyal man? What must he do, say, think or feel, to entitle him to the appellation? Usually he has been held to be one who submitted himself to the laws. He was thus contradistinguished from a rebellious man who resisted the laws. If this then is the meaning put upon it by the committee, their task may be performed soon and with some certainty, because the executive officers could soon report whether in any part of the country there was resistance to the laws on the part of the people.

If, however, we depart from this, and inquire further into the condition of the people, it is hard to see where the end is. If it is to depend on some mental or emotional condition of the person examined, who is to judge? How completely must the secession opinion have been flogged out of him by the war? Will it do to say he gives it up, or must he go further and say he is convinced the other way? What must he think of slavery? That it was a curse to the master, or a curse to the slave, or to both? What ought to be his views on suffrage? Ought he to insist on universal suffrage, universal adult suffrage, or universal manhood suffrage?

Will he be required to believe in universal negro suffrage, or may he circumscribe and limit it by a literary fence so high that a large number of negroes cannot jump it?

Then again is it thought important to know what party these fellows would prefer, whether for or against the late veto?

I confess I should like to know how much of all these several ingredients must enter into the composition of a loyal man, and then how many this laborious committee must sample in order that they may accurately determine for us the character of the whole lot.

Mr. President, I cannot conceive of anything so utterly absurd and ridiculous as this pretense of inquiring into the loyalty of the people anywhere, in a time of peace, when nobody pretends there is a flagrant war. Does any sane man believe any good will ever come out of it?

But it may be said that the committee only inquire as to the condition of States, not people. If so, I would ask to what characteristic element of States they have turned their attention? Is it to their constitutions as the limitation of their powers put upon them by the people? Or do they look at the mode and manner by which they provide for the organization of the State? Or will they go behind even their constitutions themselves, and inquire whether there was fraud, duress, or undue influence used upon the people to such an extent as to vitiate these instruments and nullify them?

If they look at the limitations only, can they say these are too few or too many; that the sovereignty is too much restrained or too much abandoned? And how long does this require for eleven constitutions? Have the committee read them? Have they got them? And how? By private enterprise, or by the usual reference? And suppose the examination made: what is the standard of the committee to try them? And if they thought them or any of them not made as they would have made them, what are they going to do about it?

They have not told us.

If it is the mode of organization they look into, what is their guide? Do they inquire into the primary distribution of political power or the right of suffrage? And if they concluded this was improper, would the State be free if they could impose terms and compel a modification? Would a form of government imposed upon a State by compulsion be a republican form, the Federalist to the contrary notwithstanding? All these are nuts for the committee to crack.

Again, can they inquire into the duress of the people in forming these constitutions? If so, who alleges it? Who imposed it? And who can remedy it, if not the people? And if the people, who now hinders the people from doing so? Cannot we make them free now to have their own way as they ought to have it under our system?

Mr. President, all these labors of the committee seem so ludicrous and extravagant that it is hardly possible to treat them with becoming gravity, especially as we have seen that the results are still less than the throes which gave them birth. We want information as to the condition of certain States, and we are treated to an amendment to the Constitution and a legal opinion—bad law at that. Is the proposed amendment germane to the function of the committee; is it within the scope of its authority; or is it a mere ebullition of the Constitution, making rage which seems to darken the visages of all members of Congress nowadays? I propose to trespass upon the Senate a dissection of it, and I hope they will witness the operation patiently. What I have to do with it may as well be done now.

What does this amendment mean?

Mr. President, the amendment means this: that the several States of the Union may have full and entire control over the political *status* of all their people, except the negro; without incurring any penalty whatever; but if they do not choose to intrust him with the franchise of an elector then they are to be deprived of all representation for him in Congress. In other words, we care nothing about any one else; our sole business in this respect is to protect the negro.

"Race and colour" is your touch-stone. Do anything you will to the poor, to the foreign-born, to the unfortunate, to the woman, to the minor, to anybody but to the man of color, the man of a different race from ourselves, to him you must be generous, even to the sharing of dominion with him.

Let us see, if we can, how race and color at this time demand such especial consideration over and above all other disabilities; because, as I have said before, no other is taken into account. The States may debar for want of money, learning, residence, height, weight, or any other measure they may see fit to adopt, but they must not touch race and color. They may refuse the right to a man who cannot read, and you have no rebuke for this, you have no penalty to impose. Why not, I would ask? If the States are competent to protect the unlearned soldier who cannot read the Constitution, why are they not good enough to be guardians of

the negroes who can? You commit the one in all confidence to their tender mercies, and yet the other you must hedge round with a constitutional amendment because of race and color. What did you say to this unlettered soldier when your armies were to be recruited and your draft quotas filled? Did you examine into his literary qualifications then, or tell him it was necessary then to have a certain amount of constitutional learning, or did you say it was enough for him if he could give and receive the countersign? Do not your pay-rolls show you took his mark as a valid signature, as valid as the stroke of his sabre and the thrust of his bayonet.

And yet you leave him to the mercy of the States. Why do you do this? How do you intend to apologize to the men who fought your battles? How do you expect to conciliate the Army by thus abandoning the unlettered soldier at a point where he may be disfranchised even by Massachusetts?

Again, the States are competent to deal with the question of the age at which the voter is qualified. They may fix it at eighteen or thirty, or at any other age, without penalty. They can do the same with regard to residence. They can require the voter to reside in one spot ten days or ten years before voting, and yet you do not restrain them.

You leave, too, at the mercy of the States the poor man; they have the right to disfranchise him to any extent. Is he not, too, a man and a brother? And upon what principle can you punish his poverty as a disqualification? It may be the result of unavoidable misfortune, the result of the visitation of God, or the act of the public enemy. It may be from defective organization, or may have been from the very excess of his virtues. Yet no one has ever suggested an amendment of the Constitution to protect him against the State in which he lives. It is not a question of race and color.

You talk of taxation without representation, and you apply it not to the whole community, but to certain classes of the community. If so, how do you exclude the thousands of women all over the country who are pursued by your tax-gatherers with as much rigor as if they were all members of Congress? Yet they are at the will of the States disfranchised now, and most likely will continue to be so. Did it not strike the committee of fifteen that something might be done for this meritorious class of our tax-payers? Is it composed wholly of single men, widowed or celibate? It involves no question of race or color.

Why should the foreigner who seeks our shores to aid us in establishing a glorious Republic where the people shall alone bear rule, run the risk of having to stand back at the bidding of a State, deprived of his franchise? How could he help the cause of his exclusion? It is very clear that he could not come to this country before he was born; and if that event happened in foreign parts, I do not see, sir, how he could avoid it or postpone it until he could be ushered in with the Declaration of Independence in his pocket, and be swaddled in the starry folds of the national flag. He comes as soon as he could, and surely stands on as fair footing as those who did not come at all, or had to be brought.

But, Mr. President, I have another objection to this amendment, which is fatal, I think. It will be observed that the committee who have reported this bill were appointed by Congress in order to inquire into the condition of States in which these negroes reside, it being alleged here that their people were so traitorous, diabolical, and malignant toward the Federal Government and the negroes that they ought not to be allowed the privilege of representation in Congress along with their taxation, and the committee was to report thereon. Now, after weeks of inquiry, I infer the committee thinks that allegation true, because surely, if it did not, it would not keep eleven sovereign States, deprived of that first and dearest of all rights, standing outside the legislative Halls where the laws are made which are to govern them. I say, then, they must have found or believed the people of those States were very bad people, or they would not have kept them out.

Well, sir, this august committee, which, as I said some days ago, carries at its girdle the keys of the Union, and upon whose terrible fiat the rights of sovereign States depend; this committee proposes in this amendment to sell out four million (radical count) negroes to the bad people of those States forever and ever. In consideration of what, I am asked—oh, shame, where is thy blush! I answer, in dust and ashes, for about sixteen members of Congress. Has there ever been before, sir, in the history of this or any other country, such a stupendous sale of negroes as that? Never, never! It is saying to the southern States, you may have these millions of human beings whom we love so dearly, and whom you hate so intensely, and about whom we have said so much, and for whom we have done so much; you may do with them as you please in the way of legislative discrimination against them, if you will only agree not to count them at the next census, except as your sheep and oxen are counted; waive your right to sixteen members of Congress, and the great compromise is sealed; the long agony is over; the nation's dead are avenged; the nation's tears are dried; and the nation's politics are relieved of the negro.

Again, this proposition presenting an alternative to the States, we have a right to suppose its authors intend to be satisfied, no matter which horn of the dilemma is taken; if the States enfranchise the negro they are satisfied; if, on the other hand, they waive their right to the sixteen members of Congress, they are satisfied; and if this latter should turn out to be a swap of negroes in exchange for increased political power, then they are satisfied.

"Call you that backing of your friends?" No wonder many of the friends of humanity threaten to "starve ere they will rob a foot further in such company." I admire their spirit, and will strengthen their firmness if it needs it.

The conclusion then is inevitable that the committee are perfectly willing that the States shall have unlimited rights over all people except the negro, the man distinguished by race and color, and as to him, they can also have these rights if they will yield their present right to sixteen members of Congress. And I might ask, does any man doubt what the States ought to do, nay, what they will do in the event this amendment becomes a part of the Constitution? Will they on any account, much less on account of a member of Congress or two in each State, agree to share political power with the negro? Will they consent to make him the custodian of the institutions of their fathers, himself the helpless, degraded ward of the Freedmen's Bureau! Will they open the door for his admission to a seat in their magisterial chairs, their legislative assemblies, or to wear the ermine in their courts of justice? Will they consent to enlarge the field wherein passion sows and demagogues reap, wherein the tribal antipathies of the races will be the terrible levers to be used by the tribal demagogues on both sides? Can they possibly accept this insidious invitation to antagonize their people in that most dangerous strife of all, the strife of politics, where the lust of ambition and the love of money engender together a brood of demons delighting in conflagration, massacre, and war? To suppose it, sir, is to suppose the country gone mad, ready to rush on to its own destruction. No midnight witches in the interest of revolution ever threw into their fearful cauldron such a quantity of black ingredients as is here contemplated, and none could form such a charm of powerful trouble. No one who knows the strife of races can think of the consequences without a shudder.

Mr. President, I have shown, I think, beyond the possibility of dispute, that this amendment cares nothing really for the interests, rights, and liberties of white people, and really very little for black people, but that the great purpose disclosed by it is to punish the States in which negroes reside by diminishing their rights of representation, and in the same ratio increasing the political power of the States having no black population. In other words, it is a scheme to transfer political power in Congress from one section of the Union and give it to another section. Here, sir, we have reason to congratulate ourselves that the framers of the amendment were not as sagacious as they were bold, not as wise as they were enterprising. Their work is palpably defective, even to effectuate their own purposes, and their machinery is so clumsy of contrivance as to render it useless.

As I have said before, their object is to deprive certain States of a part of their political power or else compel them to allow negroes to vote; and to achieve this, they provide "that whenever the elective franchise shall be denied or abridged in any State on account of race or color, all persons therein of such race or color shall be excluded from the basis of representation." Now, I submit there are many ways of denying or abridging the right in question besides putting it on the ground of race and color, which are not in themselves reasons for the denial or abridgment in any case, but are mere words of description by which a class of people are excluded. Now, if that class can be described by any other equally precise and definite terms, then these may be discarded and the reason for the exclusion still remain as before.

Now, the negro is not now, never was, excluded, either on account of his race or color; surely not on account of his race, for the large majority of the people everywhere believe that he is of our race, descended from our Adam, and entitled to be made alive in Christ the same as other men are. Nor is it on account of his color for if all to be hereafter born were Albinos, as many are, it would make no difference, so far as the real reason is concerned. What is really the true reason for his exclusion? It is not that he is not a man, or that he is a colored man, but that he is an inferior man—an inferior article of man. Now, if a State denied suffrage to negroes on account of general ignorance, vice, or what not, this amendment would not punish the exclusion; it cannot be construed beyond its terms.

Another objection is the uncertainty of the clause. Is it meant that all of the colored race in a State shall vote, men, women, and children? I suppose not; but if not, where is the abridgment or denial to begin which begets the forfeiture? Suppose it is confined, as in Massachusetts or in New York, that would not be a denial; would it be an unconstitutional abridgment? And how long would it take Congress to decide it on an apportionment bill? Cromwell's democratic

House worked three weeks on the meaning of the word "incumbrances;" this is a much more knotty puzzle.

Again, would the denial of the right to blacks forfeit the right to representations for the yellow, and if not how are the several shades of color to be distinguished? Will all the classes have to be kept separate or not? These and a hundred other difficulties might be stated, and no deliberative assembly could solve them, whatever a court might do under the maxim that construction must make the clause avail, and not destroy it. But could it be avoided? What would prevent a State from extending the franchise before the apportionment to all, and after it was made withdrawing it? Congress could not reapportion for ten years, and the same process would serve again to defeat this provision at the end of that time.

I know, sir, that it will be said that these objections are fine-spun, frivolous, &c., but to all who have listened to the debates which arise here upon the true import of phrases the meaning of which has been settled for hundreds of years, they will not appear so. Who could have foreseen that the phrase "to coin money" could have been construed to give the right to issue United States notes, that is, to "coin money out of lamp-black and rags," of leather, cloth, or anything you choose with or without reference to intrinsic value? Who could have foreseen an elaborate argument to prove the fugitive slave clause in the Constitution did not warrant the rendition of slaves, but only absconding white apprentices? No, sir, the rule is to cavil on the ninth part of a hair, and those who are ambitious of fame as Constitution-makers should look to it.

But, sir, I now come to a different class of objections, which in my judgment are sufficient to make all prudent men hesitate in the face of a proposition of this kind, made at the time, in the manner, and in the interest this is made. First, the proposition in itself is revolutionary, striking directly at the freedom of the several States, and if accomplished will overturn the Government down to its very foundations. Revolutionary, because it seeks to influence the free distribution of political power in the States by saying to them. "If you do not bestow a portion of it upon a particular class of your people we will deprive you of it to the same extent you deprive them."

Now, if there is any one thing more than another vital to the existence of a free State, which, indeed is of its very essence, it is that the people of such State shall say of themselves, without external dictation, who shall and who shall not be the depositories of their political power; in other words, who shall do their voting, who shall cast their ballots; and only attempt on the part of any power outside the State to compel them in any way to do in that behalf what they are unwilling to do is just so much sheer tyranny, and sets such outside power over that inside, making it the master. What right would New York have to compel New Jersey to admit a certain class of her people to this privilege? Or Pennsylvania to compel Maryland? Would not these weaker States feel that such an attempt would be fatal to their independence? They would say at once that this right of theirs was vital, and to yield it would be to yield their freedom itself. Then, if New York or Pennsylvania have no supervisory rights of this kind, in what way could they acquire them by joining with them the rest of the States or any number of them? The clause is revolutionary and destructive, just as much so as to attempt to compel the people of a State to elect such officers as might be pointed out to her by the United States for that purpose, because everybody knows that the elector in the States is just as much the creature of the people, just as much elected and chosen by them to vote as the officers are elected to hold offices. What would be thought of a proposition to amend the Constitution to compel the States each to send one negro member to Congress? Yet this amendment amounts to just the same thing in a roundabout way. It really says to certain States, if you do not elect a few negroes, you shall not elect anybody else instead; we will diminish the number to which you are now entitled in the same ratio as you discard them.

Mr. President, whenever the Constitution is amended in this part of it, then there is no United States; there will be no States; all will be consolidated into one great central despotism, in which the States will play the part of provinces, and all the safeguard we now have in the freedom of the people will be gone forever.

I know many will say this amendment is fair because it will not allow representation for a class of people who have no voice in public affairs. But this, sir, is founded in misapprehension. Our system is not one of class representation in any case, but the representation of communities, and when the community is represented all classes in it are represented, although the great majority have not, and many cannot have a representation of their own. The Irish and Germans of Pennsylvania never think of claiming for themselves a class representation, neither do the various trades and occupations, but all are looked upon as constituting a unit for the purposes of State government, a unit for counties, cities, towns, &c., and there can be nothing unfair in the fact that any class is excluded: it only shows that its power in the community is subordinate to one superior.

Others say that by the abolition of slavery two-fifths is added to the basis of the late slave representation, which, being the result of an accident not contemplated at the time, ought not to be allowed to remain for the advantage of the slave States. To this I answer, that from all we can learn, the number of these negroes in 1870 will more than likely be two-fifths less than it was in 1860, owing to their increased mortality resulting from the war, from the change in their mode of life, and the withdrawal of the master's care over them. But whether or not, the freedom of the States is worth more a thousand times, especially to the smaller ones, than all the increase of power they would gain by this amendment.

I am opposed to it, however, on other grounds. It is proposed to be carried by a minority party, for it will be recollected that there was nearly a million of a popular majority against Mr. Lincoln in 1860, when all the States voted. They are all now back again, and I am inclined to think, unless we change our conduct toward them, there will not be a large number of them disposed to vote with the Republicans in the future. You will be in a minority again, and the majority will manifest itself by a return to power and place. Do you suppose they will not be disposed to do a little tinkering at the Constitution, too? These patches of yours look very unseemly to them, and they may take a notion to rip them off and put on some of their own not quite to please you. Indeed, I can conceive how they might affect you or some of you even on this very tender point of representation. They might take it into their heads to make the Senate national instead of Federal; and seeing you can do so much, being a minority, what do you think they cannot do, being a majority?

Besides, you are only able to do this to them by shutting them out of these Halls; they may be strong enough to do it to you even while allowing you to be present to witness the operation. Now, sir, I would much rather let all this alone than run the risk of having the same bitter chalice come back to our own lips in the future.

It must also be evident to any sagacious man that an amendment to the Constitution which can only operate upon a particular section of the country, and which is proposed by Congress at a time when that section has no representation there, would not be worth a straw. Communities do not submit to such things so tamely, and sooner or later they manage to come out victorious over all such attempts to take advantage of their weakness. God himself may aid them. Who knows?

Besides this, sir, it would not be hard to show that none of these projects for amending the Constitution come from the people, or are demanded by the people with that earnest and decisive significance which ought always to precede organic changes such as this purports to be. How many people have petitioned for this change? Certainly I should think fifteen or twenty thousand would cover the whole of them. How small a part of the thirty millions to be affected; and what a narrow foundation upon which to base a change of a Constitution?

But that is not the worst of it. We do know that a very large majority of the Republican party are opposed to any change. They have made great sacrifices to enforce the Constitution. They look upon it as the ark of our Union covenant, and they will permit no meddlesome Uzzah to lay officious hands upon it upon pretense that it requires his aid to steady it along.

Then it is equally clear that the other half of the people of the North, the democratic party, is also opposed to this and all similar measures. In fact, upon negro suffrage they are a unit in opposition.

But the worst opposition, and the one most to be respected, is in the States where it alone would be felt; and on the whole I think it may be safely said that but a very small part of the whole people can be said to favor it.

I now come to the resolution of the committee which proposes to stop agitation and quiet the country by declaring that eleven States shall not have representation in Congress or either branch of the same until Congress shall have declared such State entitled to such representation.

Now, let us for one instant contemplate this most extraordinary proposition. Is it not a virtual setting aside or suspension of the Constitution itself until Congress shall be moved to declare it restored?

That instrument declares that—

"Representatives" * * * * * "shall be apportioned among the several States which may be included within this Union according to their respective numbers," &c.

And by an act of Congress of March 4, 1862, a certain number of Representatives fifty-six, were apportioned to the eleven States in question, fixing by law their constitutional right in this behalf.

The resolution before us sets all that at naught, and declares that these States shall have no representation at all till Congress shall so decide. The Constitution further declares that—

"The Senate of the United States shall be composed of two Senators from each State."

And this resolution declares that eleven States shall have no Senators at all till Congress shall so decide

Now, it is well to know whether Congress or the Constitution is supreme in this respect. We have been in the habit of thinking Congress was but the creature of the Constitution; that its title to rule and legislate for the people was under and by virtue of that instrument. How, then, does it assume to disregard it? Has the Sabbath become greater than the Lord of the Sabbath? Has the stream risen above the fountain?

But it is said these States have been in rebellion. Well, suppose they have. Rebellion is treason; treason is a crime, and ought to be punished. But can Congress inflict that punishment? The Constitution says emphatically:

"No bill of attainder or *ex post facto* law shall be passed."

Now, if Congress were to pass this resolution, it would be both; because it is a bill which of itself inflicts the privation of right upon the people of eleven States as a punishment for their alleged treason, which is a species of attainder known as a "bill of pains and penalties," and which has been held to be included in the prohibition of "bills of attainder." Again, even if that barrier was not in the way, there is another equally impassable, lying in this. Up until this time it has never been the law of the United States that a community could be punished at all *en masse*, either for treason or anything else, and if Congress were to attempt it now as a punishment for crimes already committed, it would be null and void; it would be an "*ex post facto* law," and one expressly forbidden.

The whole is monstrous no matter in what light it may be viewed. We have seen how small a number of traitors there were even in the worst parts of the South, and that after the people of all classes had been left by the Federal Government at the mercy of these fiends, men, women, and children; after they had suffered all the miseries of war as the consequence, then to turn round to them and say to them, "We will not punish the rebels who are guilty, and who have brought all these misfortunes upon you, but we will punish you who are innocent." Instead of saying to the traitors "We will hang you for treason," you say to the innocent people, "We will keep you out of Congress." Think of it.

We have no right to do this, either by law or in morals, and just as long as we persist in it, just so long will we be the allies of disunion, and enemies to the peace of the country. We hear it said here very often that in order to enable us to judge correctly and act advisedly in this matter we ought to have a general recognition of the State governments by Congress, that we may act together and avoid conflict. All this is plausible, but mischievous, because there is really not a doubt that the present State governments are in the sole and undisputed possession of their several States, and are obeyed cheerfully as such. And the pretense that they require investigation and legislation to restore their relations with the Federal Government is only urged as it indirectly attains the end so much to be deprecated, namely, that of punishing the people in an unlawful and unconstitutional manner.

Another and fatal objection to the course proposed in this resolution is that it provides for the joint action of the House and Senate in a matter which it is of the greatest moment should be kept entirely separate. If joint action can take place in cases of this kind, then the advantages which the country expected, and which it has realized, in the Senate of the United States, are lost to it perhaps forever.

The constitutions of the two Houses are entirely different. The House of Representatives is national, representing numbers; the Senate is Federal, representing States. The great States of New York, Pennsylvania, Ohio, Illinois, are therefore potent in the House, but in the Senate, Rhode Island, Delaware, Vermont, and New Hampshire are their equals, and serve as a kind of breakwater to prevent the effects of the sudden impulses of such heavy population as inhabit the States first named. The Senate is indeed the bulwark of the smaller States, and they ought therefore to be the especial guardians of the Constitution, because it is only by maintaining the strictest reverence for it they can expect to maintain their equal rights. I have been much surprised therefore to find Senators on this floor, whose interests of all others were most in danger, show such apathy with regard to these innovations, which if they are ever to become precedents will assuredly work the destruction of the lesser States.

Now, the Constitution expressly provides that—

"Each House shall be the judge of the elections, returns, and qualifications of its own members."

A provision that must strike every one at first sight as necessary if the bodies are to be a check one upon the other. Because if the Senate had to decide who shall go into the House or who shall not go in, the House would soon become the creature of the Senate and dependent upon it for its existence; and so if the Senate

were to allow the House the same rights over its members. This resolution, however, very ingeniously selects only a single point upon which to apply the joint action complained of, and that is this: that both Houses shall jointly decide which are the States entitled to representation. That is the whole of it.

Now, Mr. President, can anything be clearer than that this very question has been already settled authoritatively beyond dispute? Has not the Constitution settled it? Is it not to be found on every line and page of our laws—and especially in the act of March 4, 1862?

Then, if this be so, the joint committee prevents the Senate from deciding on the elections, returns, and qualifications of its members, because it gets behind the whole and denies the right of States to members at all. It does not deny but that they have Legislatures competent to elect—if it did the answer would be obvious: the Senate will decide that on the question of elections—but it declares at once, boldly, that although the people of these States are desirous of submitting to the laws they offended against, we will impose upon them a new penalty not known to the law.

Mr. President, I think I have shown beyond question that at the breaking out of the rebellion there was not any considerable number of people, in any of the States in question, who ever were guilty of treason to the United States, if we admit the law to be as I hold it is, namely, that if the legitimate Government of any country suffers itself to be dispossessed and a hostile Government to be established and put in possession in its stead, so that it cannot protect its citizens in their resistance to such hostile Government, then it cannot punish them for acts done afterward under the authority of and in obedience to the hostile Government; such acts cannot amount to treason and the law excuses them.

I think I have also shown that the moment the rebels yield and surrender, that they are immediately in the custody of the law, and can only be subjected to such punishment as it provides—to be inflicted upon them through the courts according to "due process" of law.

I have shown that for any guilty part taken by the people in the late war, that the sufferings and losses they endured in that war were the natural and sufficient punishment; that after it they remain purged, and ought to be remitted to all their constitutional rights at once.

That it is due to the dignity of the United States as a great nation, if she punishes the actual traitors who incited the rebellion, that it be done solemnly and according to the strictest form of law, in open courts, where the prisoners may have counsel and witnesses, so that they may make their defense, if they have any.

That according to the Constitution and laws all the States are still in the Union; that secession ordinances could not repeal the one, nor war set aside the other; that they are neither dead by forfeiture or *felo de se*, but are now in full and perfect existence with all their municipal machinery in full play.

That the proposition of the committee of fifteen to amend the Constitution is fundamental and revolutionary, and destructive of the freedom of the States and the liberties of the people; that it is a threat to deprive them of their rights by compelling them either to admit negroes to the right of suffrage or to give up a share of their representation which is theirs by law and the last amendment to the Constitution.

That the resolution now before us from the same committee is also revolutionary and destructive, being an attempt to suspend the Constitution and laws in regard to representation in Congress over eleven States of the Union until Congress shall see fit to restore them. It is a declaration on the part of the members of the present House and Senate, that having the means of keeping these States from being represented here, they are going to do so as long as they please; that no one of these measures can be justified as a punishment for the rebellion; that the Constitution forbids them as bills of pains and penalties, and as *ex post facto* in their character.

Then, sir, here at the conclusion, I will endeavor to answer a question which has been so often put; and with that air of braggart triumph that indicates an answer impossible. The question is this: "Would you bring back here into the Senate rebels and traitors, the authors of all our troubles, whose hands are yet red with the blood of our slaughtered people? And if not, how do you propose to avoid it unless you deny these States representation for a time at least?"

To all this I answer, no, as emphatically as any other Senator can do; but I would keep them out in a very different way from that proposed. I would keep them out by following the mode and seeking the remedy afforded by the Constitution and laws, instead of adopting a course forbidden by both and unjust in itself. I would keep out traitors, not keep out States; I would punish criminals, and not enslave communities; I would single out the guilty, and not confound the innocent with them.

Is not this easy? When the traitor asks admission here, you can arrest him for his treason; you can commit him for trial; and the offense is not bailable. I suppose everybody will agree that would keep him out, at least till he is tried. It has another great advantage, too; it is lawful and none can complain of it.

After the trial, if acquitted, he is not a traitor, and his case presents no difficulty. If he is convicted, attainted, and hanged, I suppose that would allay all fears of his return.

Now, Mr. President, when I think how obvious and effectual this plan would be, I am amazed that it should have ever entered into the human mind to contrive another. Why is it not adopted? Sir, I am afraid to answer. I am afraid there are patriots who would prefer to let treason go unwhipped rather than they should risk their own hold on power. It looks to me much like that; and if so, I am sorry that any man can be so short sighted as not to see the fatal consequences of such an exchange as this. Does it not say, your treason may go if you let us rule the country?

One word more and I am done. The country is alarmed, the people are anxious, and the political atmosphere bodes the coming of no common storm. What can we do to prevent it and bring back peace to the country and harmony to the party? Is there no common ground on which we can stand? Is there no common standard round which we can rally? I think there is, sir. Surely, we may go back to the Constitution which we have all sworn to support. We can go back to the laws and enforce them without dissension among ourselves. Then there are things which we may avoid doing. We may avoid new measures on which we cannot agree, and which only serve as wedges to split us further and further asunder.

Mr. President, why these new measures? Who is bound to the support of a new measure except the author of it? What member of a party is bound to a new measure not in contemplation of the party at the time it was organized, at the time its platform was laid down, except the author; and if dissension and division spring up from the new measure, who is responsible for that? The man who stands on the record, or the man who introduces the new measure? The man who catches the foxes and ties the fire brand to their tails so as to send them into the standing corn, or the men who do not? These are questions that the country are beginning to ask. They will ask who did this thing, who brought this about? Was the Freedman's Bureau in the Baltimore platform? Was it in the Chicago platform? Where did the party agree to that as a party? Where was that laid down as a line to which all party men should come? The pretense is absurd. The Freedmen's Bureau bill is not now and never was a party measure, except with some few people who took it into their heads that it was a very good thing. Nobody blamed them for that; they had a right to believe that; but other people who did not believe it are not to be ostracized on that account, particularly if those who did not believe it thought that in itself it was not only inexpedient and impolitic, but that it was unconstitutional.

Now, Mr. President, I say the country is beginning to inquire who introduced this cause of dissension; who started this wedge which is to drive and drive until it splits the great Republican party? I say it is perfectly plain that he is the man who started the new measure, the man who persists in it, the man who ostracizes and denounces everybody who differs with him about it. I think, Mr. President, that is so plain that he who runs may read. Certainly there can be no doubt about that.

Then, in conclusion, I have only to say that if we refuse these moderate counsels, if we refuse to abandon these new things, the only remedy will be to take the consequences and they seldom linger long behind the act.

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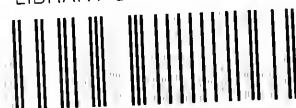
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